

DISMISSALS DUE TO DELAY OF ANALYSIS OF EVIDENCE

SUBMITTED TO THE NORTH CAROLINA GENERAL ASSEMBLY
JUSTICE & PUBLIC SAFETY OVERSIGHT COMMITTEE
PURSUANT TO S.L. 2015-241, 18A.9

NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS

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Section 18A.9 of the Appropriations Act of 2015 mandated that “Whenever a criminal case is dismissed as a direct result of a delay in analysis of evidence by the State Crime Laboratory, the district attorney for the district in which the case was dismissed shall report that dismissal and the facts surrounding it to the Conference of District Attorneys. The Conference of District Attorneys shall compile any such reports of dismissals and, in coordination with the State Crime laboratory, shall report them quarterly starting October 30, 2015, to the chairs of the House of Representatives and the Senate Appropriations Committees on Justice and Public Safety and to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety.”

FORENSIC ANALYSIS

Following the 2009 U.S. Supreme Court ruling in *Melendez-Diaz v. Massachusetts* that required forensic scientists to provide live, in-court testimony, , the State Crime Lab has navigated the challenges of inadequate funding, noncompetitive pay, and changes in forensic science. The Conference of District attorneys worked to secure funding for both local hospitals and a statewide vendor contract to handle toxicology analysis to assist in-house scientists to clear long-pending cases. While the State Crime Lab has made great strides to address these changes and challenges, and improvements are being realized, the delays have had an effect on the processing of some criminal cases.

COURTS PROCESSING

Despite overall improvement in the timeliness of forensic analysis, District Attorneys continue to report challenges to seek justice in a timely manner, keep an ever-growing docket moving and process cases that have been languishing because of lack of analyzed evidence. Although not an overwhelming number, prosecutors do report DWI cases continued numerous times because of the length of time to receive completed lab analysis. When such significant delays occur, resulting in multiple continuances, judges have regularly denied further continuance requests. This forces prosecutors with the choice of trying the case without the lab analysis or dismissing the case outright if they have no other evidence. In some cases, ADAs have taken voluntary dismissals on cases with the hope of re-filing charges after lab analysis is complete. However, the risk is that the statute of limitations could run out before the analysis is obtained.

CONCLUSION

The caseloads at the State Crime Lab grew due to multiple factors over several years. There is no quick fix nor a single solution to the problem. However, much progress has been made in addressing the challenges through multiple initiatives. Significant effort has been made in the past two years to encourage prosecutors and the State Crime Lab to develop new procedures and processes, improve communication and responsiveness in order to maximize resources. The State Crime Lab and the Conference of District Attorneys continue to encourage District Attorneys to utilize outsourcing to address any backlog of DWI cases or instances where cases are being dismissed due to lab delay.

The Conference of District Attorneys continues to train the over 600 prosecutors and 500 legal assistants on these new procedures and encourages District Attorneys to implement new processes in their case management. Caseload cleanup initiatives, outsourcing, local labs and hospital contracts have all been applied and we are beginning to see progress. It is clear to both the State Crime Lab and District Attorneys that continued communication between prosecutor offices and the Lab is the best way to ensure that cases are analyzed and managed in the most effective manner. The Conference of District Attorneys and the State Crime Lab continue to look for innovative ways to process cases, automate communication and train constituents on best practices.

STATE CRIME LAB RESPONSE

The NC State Crime Laboratory works effectively with the Conference of District Attorneys to promote best practices among District Attorneys to make forensic analysis more efficient, including training and encouraging District Attorneys to:

- Notify the Lab when analysis is no longer needed in a case so that time and money are not spent working cases not needed by the Court. **35 of 44 Districts are fully participating as of October 2016.**
- Establish agreements with Superior Court judges to allow Lab analysts serving as trial witnesses to testify quickly instead of waiting in court, minimizing the time forensic scientists spend away from active casework. Although **26 of 50 Superior Court Districts, representing 53 counties, are participating at this time**, the Lab saw an increase of 28% of 'wait time' from the prior year
- Take advantage of outsourcing analysis of certain toxicology cases, available through Lab contracts with an approved vendor and paid for by state funds. **32 of 44 Districts are participating as of October 2016.**

These practices enable the State Crime Lab to provide more timely forensic analysis and all judicial districts in the state are encouraged to adopt them. Coupled with transparency standards and high quality through Lab Accreditation and Scientist Certification, the Lab remains committed to serving the State's citizens.

Working with DAs to provide timely lab analysis

The State Crime Lab stands ready to work with District Attorneys in cases where judges are not willing to provide a continuance. The Lab also has the capacity to rush analysis of evidence needed for certain impending court dates, with sufficient notice from the District Attorney.

DAs encouraged to prioritize cases and communicate with the Lab

Scientists with the State Crime Lab rely on District Attorneys to keep them informed about court dates and help them prioritize cases. The Lab tracks each case it receives, its current status, and when results are shared with investigators and prosecutors. District Attorneys who are informed that a case may be delayed at the State Crime Lab are encouraged to check with the Lab directly. For example, the Lab is aware of cases reported as dismissed due to delays in lab work months after the Lab had actually completed analysis and provided results.

Blood drug cases require most complex type of toxicology analysis

Many DWI cases request blood drug combination analysis—testing of blood samples for multiple drugs—which takes substantially longer than simple blood alcohol analysis. The State Crime Lab has worked to speed blood drug analyses by adding toxicology to the existing Western Regional Crime Lab , requesting and adding additional scientists to work cases, seeking legislation that would allow written toxicology testimony in District Court, encouraging districts to allow outsourcing of cases where appropriate, and improving salaries to retain qualified analysts. These measures mean State Crime Lab toxicologists will spend less time traveling to court and thus more time in the Lab, where they can focus on the most critical cases.

The State Crime Lab thanks the Conference of District Attorneys for its work on this report and looks forward to continuing to work with the Conference and its members on behalf of the North Carolina criminal justice system.